IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

FAO.No. 124 of 2006()

AGAINST THE ORDER DATED 20/03/2006 IN EA.98/05 IN EP.27/04 IN OP.289/2003 of FAMILY COURT, THIRUVALLA
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APPELLANT/PETITIONER/DEFENDANT.

SOMAN, S/O.PADMANABHAN,
S.S.HOUSE, MELOODU MURI, PERINGANAD VILLAGE.

BY ADV. SRI.SIBY MATHEW
SRI.A.A.MOHAMMED NAZIR

RESPONDENTS: COUNTER PETITIONER/PLAINTIFF.

SUJA, W/O.SOMAN, UDAYANMULA KIZHAKKETHIL
MELOODU MURI, PERINGANAD VILLAGE.

BY ADV. SMT.ASHA CHERIAN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 27/07/2007, ALONG WITH FAO NO. 127 OF 2006 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH,

&

T.R.RAMACHANDRAN NAIR, JJ.

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FAO.Nos. 124 & 127 of 2006.

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Dated this the 27th day of July, 2007.

J U D G M E N T

T.R.Ramachandran Nair, J.

These appeals arise from the orders passed in EA.No.97/2005 and EA.No.98/2005 in EP.No.27/2004 in OP.No.289/2003 of the Family Court, Thiruvalla. The appellant is the husband of the respondent herein.

2. The respondent filed OP.No.289/2003 seeking for declaration that she is the owner of both A & B schedule properties and for recovery of possession of the same and also to recover 12 sovereigns of gold ornaments in the possession of the appellant or the value thereon from the appellant and his properties. The OP was allowed exparte.

3. According to the appellant only when he received an order of attachment of properties in September, 2005, he came to know about the order passed in OP.NO.289/2003. The judgment in the above case is admittedly dated 17.11.2003. In the EP he appeared on 27.9.2005 and sought time for filing objections. He filed three applications ie., EA.No.97/2005

seeking permission to appoint an Advocate for him, EA.No.98/2005 for setting aside the exparte decree and EA.No.97/2005 seeking to condone the delay in filing the petition to set aside the exparte decree.

4. As per the averments of the appellant in the memorandum of appeal, EA.No.98/2005 and EA.No.97/2005 were adjourned to 23.12.2005 and thereafter to 31.1.2006. On both occasions the respondents herein prayed for time for filing objections to the above E.As filed by the appellant. Meanwhile the proceedings in execution were also in motion and on 31.1.2006 a notice under Order XXI Rule 66 of the CPC was served on him. According to the appellant, even though he had pleaded for consideration of the above E.As. in view of the speedy steps being taken in the execution, that was not being acceded to which forced him to file WP(C).No.4349/2006 before this Court seeking for a direction the Family Court to dispose of the applications mentioned above before proceeding further with the execution proceedings. By judgment dated 14.2.2006 this Court had directed the Family Court, Thiruvalla to dispose of the E.As. filed for setting aside the exparte decree and to condone the delay in filing the same within a period of one month from 21.2.2006.

5. The appellant has averred that he had produced the certified copy of the judgment before the Family Court in the 4th week of February,

2006. It is also stated that the proceedings of the case show that the case was advanced from 10.4.2006 to 28.3.2006 for which he had not received any notice. On that day, both the applications were dismissed by the Family Court. Challenging the same these appeals have been filed by the appellant.

6. EA.No.97/2005 was dismissed noticing that the petitioner is absent and there was no representation for him. This is under challenge in FAO.No.127/2006. In FAO.No.124/2006 the order passed by the Family Court in EA.No.98/2005 is under challenge. The EA was dismissed for default and also in view of the dismissal of EA.No.97/2005.

7. The learned counsel for the appellant argued that the appellant could not appear before the Family Court as there was no notice of the posting on which the case was heard. The learned counsel also points out that the directions of this Court in the judgment in WP(C).No.4349/2006 have not been complied with by the Family Court.

8. The learned counsel appearing for the respondent strongly opposed the above submissions. It was contended that the appellant is only attemping to delay the execution proceedings and at every stages he had been adopting dilatory tactics to deny the fruits of the decree to the respondent. The learned counsel further points out that the appellant was not diligent in appearing before the Family Court inspite of the directions in the judgment of

this Court in WP(C).No.4349/2006 and therefore the appeals deserve no merit.

9. After hearing the parties at length, we feel that in the interest of justice a further opportunity has to be given to the appellant to put forth his grievances before the Family Court. The OP itself has been allowed exparte and the application for setting aside the exparte decree and the application for condonation of delay have been dismissed mainly for default of appearance of the appellant. Even though the learned counsel for the respondent strongly urged that the idea is only to protract the proceedings, we find that in the light of the judgment of this Court in WP(C).No.4349/2006, the EA is ought to have been disposed of on merits after hearing the appellant. Hence the orders impugned in these appeals are set aside and the appeals are allowed on condition of payment of Rs.1,000/- as costs to the respondent. The costs shall be paid directly to the respondent and a memo to that effect shall be produced before the Family Court. The parties will appear before the Family Court on 15.9.2007 as it is reported that the case stands posted on that day. The Family Court will expedite the proceedings and EA.No.97/2005 and EA.No.98/2005 in E.P.No.27/2004 in OP.No.289/2003 will be disposed of expeditiously, at any rate, within a period of three months from 15.9.2007. Till then the interim orders passed by this Court in the

appeals will continue. The appeals are disposed of with the above directions. No costs.

KURIAN JOSEPH, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-